

April 17, 2014

Mr. Devin M. Leary
Human and Rohde, Inc.
512 Virginia Avenue
Towson, Maryland 21286

Re: Knott Property (William and Susan)
Forest Conservation Variance Request
Tracking #02-14-1784

Dear Mr. Leary:

A request for a variance from Baltimore County's Forest Conservation Law has been reviewed by this Department of Environmental Protection and Sustainability (EPS). This request proposes to remove one of the twenty two specimen trees onsite for the development of a three lot residential subdivision on a 3.9-acre property. The specimen tree to be removed is a 30 inch Black Gum (*Nyssa sylvatica*) in good condition.

Additionally, nine other specimen trees on or adjacent to this property will receive impacts to a portion of their critical root zones (CRZs), leaving eleven trees unaffected. However, the nine affected specimens can be saved if proper silvicultural practices are used to protect their remaining root systems. It should be noted that a 35 inch nonnative Norway Spruce (*Picea abies*) was removed from the property last spring; however, no mitigation is required for removal of nonnative specimen trees.

The removal of the specimen Black Gum is due to the proposed widening and reconfiguration of the existing driveway, which will serve both the existing and proposed dwellings. EPS staff have determined that access to the lots is not only constrained by the twenty two specimen trees, but also by the 0.7-acre Forest Buffer and Forest Conservation Easement along the site's western boundary, which is required as a condition of minor subdivision approval by EPS.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six criteria listed in Subsection 33-6-116 (d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d)

must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The locations of the specimen trees and extent of their CRZs would significantly limit the size of the building and constrain access if full protection to all specimen trees was provided. However, we note that a residential dwelling already exists on the property and although not a full use of the site, a benefit is realized nonetheless. Therefore, we find that full application of the law would not deprive the petitioner of all beneficial use of the property; thus, this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. Rather than the general conditions in the neighborhood, the petitioner's plight is due largely to the widespread distribution of the existing specimen trees as well as the site's topography and the water resources onsite, all of which existed well prior to the law from which this special variance is requested. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The granting of this special variance will not adversely affect the character of the surrounding neighborhood, as the limited residential development is well within the DR-2 zoning density regulations and consistent with the character of the neighborhood. Consequently, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. This project will meet its 0.6-acre afforestation requirement by planting in the 0.7-acre Forest Buffer Easement onsite as well as meeting Environmental Site Design stormwater management requirements. Therefore, we find that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The request is based solely on the fact that the specimen trees are widespread across the buildable area of the property. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the

spirit and intent of Article 33 of the Baltimore County Code. Mitigating the removal of the one specimen tree by paying a fee-in-lieu to the Baltimore County Forest Conservation Fund along with adequately protecting the specimen trees to remain onsite would be consistent with the spirit and intent of the Forest Conservation Law. Therefore, we find that this criterion has been met by the variance request.

Based upon our review, this Department finds that the required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. A \$795.25 fee-in-lieu of mitigation for the removal of the 30 inch native specimen tree shall be made into the Baltimore County Forest Conservation Fund prior to this Department's approval of the minor subdivision.
2. Impacts to the CRZs of the additional specimen tree to remain shall be minimized through the use of vibratory knife root pruning and other silvicultural practices as well as additional protective measures to be detailed on the approved, final Forest Conservation Plan. Also, prior to approval of any grading and sediment control plan, the sequence of operations thereon shall reference implementation of the tree protection and stress reducing measures on the approved Forest Conservation Plan.
3. Prior to issuance of any Baltimore County permit, blaze orange high visibility construction fence shall be installed along the limit of disturbance wherever the limit of disturbance is within 50 feet of any remaining specimen tree or Forest Conservation Easement. The protective fence shall be illustrated on the plan view and mentioned in the sequence of operations on both the sediment control plan and final Forest Conservation Plans.
4. The limits of the Forest Buffer and Forest Conservation Easement shall be permanently posted at 100-foot intervals or at any turning point with "Forest Conservation-Do Not Disturb" signs, which are available from private sign contractors. The signs must be installed prior to issuance of any permits for the development or by April 17, 2015, whichever comes first.
5. The following note must appear on all subsequent plans for this project:

"A variance was granted on April 17, 2014 to Baltimore County's Forest Conservation Law to allow permanent impacts to the lone specimen tree adjacent to the driveway. Conditions were placed on this variance, including paying a fee-in-lieu into the Baltimore County Forest Conservation Fund and protecting the remaining specimen trees onsite."

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It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

Please have the property owner and contract purchaser, if applicable, sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Michael S. Kulis at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina
Director

VJG:msk

c. Marian Honeczy, Maryland DNR

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Property Owner's Signature

Date

Printed Name

Contract Purchaser's Signature

Date

Printed Name